IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2841 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SIKANDARBHAI MOHMADBHAI FAKIR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2841 of 2003

MR YATIN SONI for MR DF AMIN for Petitioner No. 1

MR KP RAVAL Ld. AGP for Respondent No. 1-3

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 13/06/2003

ORAL JUDGEMENT

Heard ld. Advocate Mr. Yatin Soni for the petitioner and Mr. KP Raval ld. AGP on behalf of the respondents. Rule has been issued by this court in this

petition on 17.3.2003 and made it returnable after six weeks.

In the present petition the detention order dated 2.12.2002 passed by the District Magistrate, Surendranagar under sec. 3 sub-section (2) of the Gujarat Prevention of Anti Social Activities Act, 1985, has been challenged on various grounds by the petitioner.

The detenu has been detained as class-II detenu in District Jail, Bhavnagar. Looking to the grounds of detention, four offences has been registered i.e. on 24.5.2002, 24.5.2002, 7.8.2002 and 8.11.2002 before the Dhangadhra Police Station and two another offences have been registered on 18.7.2002 and 2.9.2002 under the Provisions of IPC. Four statements have been recorded of the secret witnesses on 14.11.2002 and 15.11.2002 and verified by the DY.S.P. on 15.11.2002 and the same has been verified by the detaining authority on 25.11.2002. Thereafter, the order of detention has been passed on 2.12.2002. Two affidavits in reply has been filed by the detaining authority which are taken on record and the copies thereof has been served to the petitioner.

Ld. advocate Mr. Soni appearing on behalf of the petitioner has challenged the detention order on various grounds but according to him, one ground is enough to vitiate the order of detention. Therefore, he submitted that in registered offences as well as unregistered offences disclosed by the secret witnesses, nowhere any material has been pointed out by the detaining authority about the activities of petitioner acting in a manner prejudicial to the maintenance of public order. No reasonings has been given by the detaining authority in the grounds of detention. All are individual offences relates to individuals only and because of that offences either registered or unregistered maintenance of public order has not been disturbed and for that there is no any material considered by the detaining authority to arrive a conclusion about the subjective satisfaction that because of the activities carried out by the petitioner which has disturbed the public order. Mr. Soni submitted that the law and order and public order are altogether a different things. In the facts of the case, he submitted that the detaining authority is not able to justify the order of detention because of the activities carried out by the petitioner is disturbing the public order and, therefore, he submitted that the order of detention is vitiates.

Ld. AGP Mr. KP Raval submitted that a

individual offence committed by the petitioner is itself suggests that in public at large are in dangerous position because each individual is harassed by the petitioner to the extent to give threat of death to the concerned person. He also submitted that individual is also a part of the public and they having fear from the petitioner, itself is sufficient to disturb the public order. If such activities continues by the petitioner, is definitely adversely affect the public order. Therefore, he submitted that these are the totality of the facts and circumstances of the case of registered offence as well as unregistered having been disclosed by the secret witnesses. The subjective satisfaction of the detaining authority in respect to disturbing the public order is based on material and, therefore, the detention order is valid and no interference is required by this Court.

I have considered the submissions made by both the learned advocates. The question is that whether registered offence and unregistered offences which has been disclosed by the secret witnesses really the maintenance of public order has been disturbed or not. There is a vast difference between law and order as well as public order. It is the duty of the detaining authority to satisfy the conscious of the court that because of the activities carried out by the petitioner which adversely affect the maintenance of public order. I have perused the entire grounds of detention as well as record produced by the petitioner and I have also perused the statements of the secret witnesses. According to my opinion, in entire reasoning of the grounds of detention, there is no such averments or reasons given by the detaining authority that because of the activities carried out by the petitioner adversely affect the maintenance of public order, even this fact is not disclosed by the secret witnesses in their statement. Therefore, considering this factual aspect when no reason given by the detaining authority that because of the activities of the petitioner the maintenance of public order is disturbed and, there is no such narration in the statement of secret witnesses. The law on this point is very settled by the Apex Court in the case of Mustakmiya Jabbarmiya Shaikh vs. M.M. Mehta, Commissioner of Police and Ors., reported in JT 1995(4) SC 215, wherein it has been observed as under:

> "In order to bring the activities of a person within the expression of "acting in any manner prejudicial to the maintenance of public order", the fall out and the extent and reach of the

alleged activities must be of such a nature that they travel beyond the capacity of the ordinary law to deal with him or to prevent his subversive activities affecting the community at large or a large section of society. It is the degree of disturbance and its impact upon the even tempo of life of the society or the people of a locality which determines whether the disturbance caused by such activity amounts only to be a breach of "law and order" or it amounts to breach of "public order"."

The Division Bench of this Court has also considered the case of Mustakmiya Jabbarmiya Shaikh vs. M.M. Mehta, Commissioner of Police & Ors., 1995(2) GLR 1268(SC) in the case of Ashokbhai Jivraj @ Jivabhai Solanki vs. Police Commissioner, Surat & Ors., reported in 2000(1) GLR P. 816. The relevant observation made by the Division Bench of this Court in para-21 as under:

"So far as the cases against the detenu are concerned, they have already been registered. They were against persons mentioned therein which is stated in the grounds of detention by the detaining authority. Regarding two statements, having taken into account the law laid down by the Supreme Court in Ram Manohar Lohia vs. State of Bihar, AIR 1966 SC 740 and reiterated from time to time including the decisions referred to by us hereinabove, the case falls under the maintenance of "Law and Order" and not "Public Order". The subjective satisfaction arrived at by the detaining authority, therefore, cannot be said to be legal, valid and in accordance with law. Since in the facts and circumstances, an order of detention could have been passed by the detaining authority for maintenance of "Public Order", the order deserves to be quashed and is hereby set aside. The detenu is ordered to be set at liberty fothwith unless required in any other case. Appeal is accordingly allowed. No order as to costs."

Applying this ratio laid down by the Apex Court and considering the factual aspects of the present matter, when there is no reasoning given by the detaining authority about the adverse effect on the maintenance of public order, no such disclosure given by the secret witnesses before the Sponsoring Authority or before the detaining authority. In absence of this material, the

subjective satisfaction of the detaining authority is without any base and, therefore, according to my opinion, this ground is enough to vitiate the order of detention because it amounts to non-application of mind on the part of the detaining authority for coming to the subjective satisfaction about the adverse effect of maintenance of public order, therefore, the detention order is required to be quashed and set aside.

In the result, this petition is allowed. The impugned order of detention dated 2.12.2002 is quashed and set aside. The petitioner-detenu - Sikandarbhai Mohmadbhai Fakir who is detained in District Jail, Bhavnagar is hereby ordered to be released forthwith, if he is not required to be detained in any other case. Rule is made absolute with no order as to costs. DS Permitted.

(H.K. RATHOD, J.)

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